



**STATE OF NEW JERSEY**

***Board of Public Utilities***

*Two Gateway Center  
Newark, NJ 07102*

**TELECOMMUNICATIONS**

IN THE MATTER OF THE PETITION FOR AN )  
ORDER AUTHORIZING A.R.C. NETWORKS )  
INC. d/b/a INFOHIGHWAY TO PROVIDE AND )  
RESELL LOCAL EXCHANGE AND INTRASTATE )  
TOLL TELECOMMUNICATIONS SERVICES )

**ORDER OF APPROVAL**

DOCKET NO. TM00030170

(SERVICE LIST ATTACHED)

**BY THE BOARD:**

By letter dated March 8, 2000 A.R.C. Networks, Inc. d/b/a InfoHighway (Petitioner or ARC) filed a petition with the Board of Public Utilities (Board) requesting authority to provide local exchange and intrastate toll telecommunications services in the State of New Jersey. Petition at 3. Petitioner had preliminary discussions with Staff prior to formal filing of this matter on March 8, 2000. As a result of their preliminary discussions, Petitioner prepared a Competitive Exchange Carrier Questionnaire sent to Staff on October 15, 1999. This questionnaire remained valid although the filing was delayed until March 8, 2000. ARC also responded to Staff information requests by letters dated May 1, 2000 and May 12, 2000. Petitioner, as part of its petition and in its responses to Staff questionnaire states that its financial and marketing information as contained in these documents is highly proprietary and confidential and wishes to have it protected from public disclosure. Id. at 4.

According to the petition, ARC was incorporated under the laws of the State of New York on February 22, 1993, as A.R.C. Network Corp. On April 10, 1996 the name was changed to A.R.C. Network, Inc. Since that time, the corporation was first dissolved, and then later reinstated, on February 26, 1998. Id. at 2. Petitioner's principal offices are located at 1770 Motor Parkway, Hauppauge, New York 11788. Ibid.

Petitioner submitted copies of its Articles of Incorporation, New Jersey Certificate of Good Standing and its New Jersey authority to operate as foreign corporation. Id. at 2, Exhibit A, B and C. According to the petition, ARC was formed to provide local exchange and intrastate toll services. Id. at 1. Petitioner advised that ARC is currently certified to provide local telecommunications services in Connecticut, Florida, Michigan, New York, Ohio, Rhode Island

and Texas. Petitioner is also authorized to provide interexchange telecommunications services, in Arkansas, California, Connecticut, Florida, Illinois, Indiana, Kansas, Maryland, Massachusetts, Missouri, Nevada, New York, Oklahoma, Pennsylvania, Rhode Island, Texas and Washington. In addition, Petitioner is currently providing both local and interexchange service to 68 customers in New Jersey on a resale basis and no complaints have been received regarding these services. ARC has not been denied authority to provide telecommunications services in any State. In addition ARC has no pending civil, criminal or administrative action against it. *Id.* at 4. By letter dated May 1, 2000 Petitioner stated that it currently has approximately 80 employees, none of which are currently based in New Jersey.

Petitioner has pending before the Board a request for approval of an interconnection agreement with Bell Atlantic-New Jersey, Inc. (BA-NJ). See Docket TO00010048.

In its petition and October 15, 1999 questionnaire response, Petitioner advised that it seeks authority to initially provide local exchange and exchange access telecommunications services to business customers only throughout New Jersey. Petitioner will also initially offer local intraLATA toll and interLATA toll services through the resale of retail services and the lease and resale of unbundled network elements purchased from ILECs. The scope and extent of these services will depend, at least in part, on the completion of interconnection agreements.

Petitioner requested waivers of rules requiring keeping books and records in New Jersey and the maintenance of these records according to the Uniform System of Accounts (USOA). Petitioner wishes to maintain its books and records at its principle offices at A.R.C. Networks, Inc., 1770 Motor Parkway, Hauppauge, New York 11788, and to keep those books and records in accordance with Generally Accepted Accounting Principles (GAAP). Petitioner maintains that keeping its books and records in New Jersey and according to USOA would be unduly burdensome. Petitioner has agreed to provide to the Board, in New Jersey, any books and records desired and reimburse the Board for any expenses accrued in viewing them. Petition at 6, 7.

Petitioner asserted that approval of its petition will further the public interest by expanding the availability of competitive telecommunications services in the State of New Jersey. *Id.* at 5. Petitioner also asserted that approval of this petition will provide New Jersey customers with access to new technologies and service choices and will permit customers to achieve increased efficiencies and cost savings. In addition, Petitioner stated that approval of its petition will facilitate economic development in the State of New Jersey. *Ibid.*

With regard to its managerial qualifications, ARC stated that it possesses the technical capability and managerial qualifications to operate and manage its telecommunications operations in the State of New Jersey. *Ibid.* Petitioner submitted the professional biographies of its key personnel which, according to Petitioner, are well qualified to execute its business plans, having extensive managerial and technical experience in the telecommunications industry. *Id.* at 5, Exhibit F.

Petitioner stated that it has access to the financial capital necessary to conduct its telecommunications operations and has submitted actual and pro forma financial information of the A.R.C. Networks Inc. that include all states in which it operates as evidence. Petitioner asserted that this is extremely sensitive and strategic information that could be used by competitors to determine market share, revenue and other information damaging to ARC in the marketplace. Petitioner also stated that it has used its best efforts to keep and maintain such

information confidential and due to the sensitive nature of this information has requested that Board to limit access to such information.

By letter dated May 24, 2000, the Division of the Ratepayer Advocate advised the Board that it was satisfied that the petition is consistent with the public interest, convenience and necessity, and therefore recommended its approval. In addition, the Advocate noted that ARC was a New York corporation without an office in New Jersey, and recommended that the Board condition its approval by requiring that ARC maintain a toll free customer service number for the convenience of New Jersey customers.

## DISCUSSION

On February 8, 1996, the federal Telecommunications Act of 1996, P.L., 104-104, 110 Stat. 56, codified in scattered sections of 47 U.S.C. §151 et seq., was signed into law, removing barriers to competition by providing that:

[n]o State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect or prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.

[47 U.S.C. §253(a)].

Therefore, Board approval of Petitioner's entry into the telecommunications marketplace is required, assuming Petitioner meets all other requirements, including, but not limited to, a demonstration of financial, technical and managerial integrity.

In considering this application, the Board recognizes its obligation not to prohibit entry into intrastate telecommunications markets. 47 U.S.C. §253(a). Approval is also in keeping with the New Jersey State Legislature's decision that it is the policy of the State to provide diversity in the supply of telecommunications services, and its findings that competition will "promote efficiency, reduce regulatory delay and foster productivity and innovation" and "produce a wider selection of services at competitive market-based prices." N.J.S.A. 48:2-21.16(a)(4); N.J.S.A. 48:2-21.(b)(1) and (3).

Therefore, having reviewed ARC's petition and the information supplied in support thereof, the Board FINDS that Petitioner has demonstrated that it possesses the requisite financial, technical and managerial resources which are necessary to provide telecommunications services in New Jersey. Accordingly, the Board HEREBY AUTHORIZES Petitioner to provide local exchange and intrastate toll telecommunications services in New Jersey subject to approval of its tariff and submission of its own pro forma financial statements for its New Jersey operations. The Board notes that Petitioner will not be able to provide telecommunications services until a tariff is approved by the Board and the required financial statements have been provided. Regarding the Petitioner's request for waivers of Board rules, the Board FINDS that the Petitioner has demonstrated good cause why the Board should grant relief from its requirements to maintain its books and records under the USOA and within New Jersey. Therefore, subject to the Petitioner's continuing responsibility to provide the Board its books and records upon 48 hours notice and in the manner requested, and to pay to the Board any reasonable expenses or charges incurred by the Board for any investigation or examination of these books and records, the Board APPROVES Petitioner's request for the exemption from maintaining its books and records in New Jersey and under the USOA.

Regarding the Advocate's recommendation that ARC maintain a toll free customer service number, the Board notes that by letter dated July 17, 2000, ARC indicated that such a number would be maintained.

With regard to Petitioner's financial and marketing information as submitted in its petition, questionnaire, and letters dated May 1, 2000 and May 12, 2000 the Board FINDS that the Petitioner has shown good cause, pursuant to N.J.A.C. 1:1-14.1 that this information merits protection from disclosure in order to prevent competitive harm to the Petitioner. Therefore, the Board DIRECTS that the financial and marketing information contained in these letters be kept under seal.

DATED: 7/28/00

BOARD OF PUBLIC UTILITIES  
BY:

(signed)  
HERBERT H. TATE  
PRESIDENT

(signed)  
CARMEN J. ARMENTI  
COMMISSIONER

(signed)  
FREDERICK F. BUTLER  
COMMISSIONER

ATTEST:

(signed)  
EDWARD D. BESLOW  
ACTING SECRETARY